

Hearing Date and Time: October 4, 2017, 9:30 a.m. (Atlantic Standard Time)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re:	:	
	:	
THE FINANCIAL OVERSIGHT AND	:	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	:	Title III
	:	
as representative of	:	Case No. 17-BK-3283 (LTS)
	:	
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i> ,	:	(Jointly Administered)
	:	
Debtors. ¹	:	
	:	
	X	

**RESPONSE OF COMMONWEALTH AGENT TO MOTION OF COFINA AGENT FOR
ORDER CONFIRMING THAT 48 U.S.C. § 2125 APPLIES TO COFINA AGENT**

The Official Committee of Unsecured Creditors of all title III Debtors (other than COFINA) (the “Committee”), as the “Commonwealth Agent” with respect to the “Commonwealth-COFINA Dispute,” as defined in the *Stipulation and Order Approving Procedure to Resolve Commonwealth-COFINA Dispute* [Docket No. 996] (the “Stipulation and Order”), hereby submits this response (the “Response”)² to the *Motion of COFINA Agent Pursuant to 48 U.S.C. § 2161 and 11 U.S.C. § 105(a) for Order: (I) Confirming that 48 U.S.C. § 2125 Applies to COFINA Agent; (II) Confirming Retention of Local Counsel; and (III) Clarifying Payment of Fees and Expenses of COFINA Agent and Her Professionals* [Docket No.

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808), and (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474).

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Stipulation and Order.

1121] (the “COFINA Agent Motion”). In support of this Response, the Commonwealth Agent respectfully states as follows:

1. The Commonwealth Agent does not oppose the relief sought in the Motion, but files this Response merely to ensure that any order confirming the application of section 105 of PROMESA³ to the COFINA Agent (as requested in the Motion) equally applies to the Commonwealth Agent.

2. Section 105 of PROMESA provides that “[t]he Oversight Board, its members, and its employees shall not be liable for any obligation of or claim against the Oversight Board or its members or employees or the territorial government resulting from actions taken to carry out this chapter.” Just like the COFINA Agent, the Commonwealth Agent is the approved agent appointed by the Oversight Board for purposes of the Commonwealth-COFINA Dispute and, therefore, should enjoy the benefit of this protection. Indeed, the Stipulation and Order specifically provides that “[e]ach Agent shall have the rights of its respective debtor solely in respect of the conduct of the litigation and settlement of the Commonwealth-COFINA Dispute.” *See* Stipulation and Order ¶ 4(f). Absent the Stipulation and Order, the “respective debtor” would be the Commonwealth, as represented by the Oversight Board, whose rights include those in section 105 of PROMESA. Accordingly, the Commonwealth Agent believes that the relief requested with respect to section 105 of PROMESA by the COFINA Agent is appropriate.

3. We also note that, separate from section 105 of PROMESA, the Committee is generally protected from liability by section 1103 of the Bankruptcy Code, which is applicable to these title III cases pursuant to section 301 of PROMESA. *See, e.g., In re PWS Holding Corp.*, 228 F.3d 224, 246 (3d Cir. 2000) (holding that 11 U.S.C. § 1103(c) “limits liability of a

³ References to PROMESA are references to 48 U.S.C. §§ 2101 *et. seq.*

committee to willful misconduct or *ultra vires* acts”); *Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 514 (S.D.N.Y. 1994) (“[A]n official committee such as the Creditors Committee enjoys a qualified immunity that corresponds to, and is intended to further, the Committee’s statutory duties and powers.”).

4. However, to avoid any argument that the COFINA Agent and the Commonwealth Agent somehow enjoy different protections under PROMESA, the Commonwealth Agent requests that any order of this Court granting the COFINA Agent’s Motion be made equally applicable to the Commonwealth Agent. In particular, the Commonwealth Agent requests that the Court enter the proposed order attached hereto as Exhibit A, which is a modified version of the COFINA Agent’s proposed order. A redline marked to show the changes made to the COFINA Agent’s proposed order is attached hereto as Exhibit B. The Commonwealth Agent has discussed the relief requested in this Response with both the COFINA Agent and the Oversight Board, and both parties consent to the Commonwealth Agent receiving the same relief under section 105 of PROMESA as granted to the COFINA Agent by any order of this Court.

Notice

5. Notice of the Response has been provided to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the Office of the United State Attorney for the District of Puerto Rico; (iii) the Oversight Board; (iv) the Puerto Rico Fiscal Agency and Financial Advisory Authority; (v) the official committee of retirees; (vi) the insurers of the bonds issued or guaranteed by the Debtors; (vii) counsel to certain ad hoc groups of holders of bonds

issued or guaranteed by the Debtors;⁴ and (viii) all parties that have filed a notice of appearance in the Debtors' title III cases.

No Prior Request

6. No previous request for the specific relief sought herein has been made by the Commonwealth Agent to this or any other court.

[Remainder of page intentionally left blank.]

⁴ Which include the Mutual Fund Group, the Ad Hoc Group of General Obligation Bondholders, the COFINA Senior Bondholders' Coalition, and the QTCB Noteholder Group, each as such group is defined at Docket Nos. 28, 68, 216, and 134, respectively.

WHEREFORE, the Commonwealth Agent respectfully requests that the Court enter the proposed order attached hereto as Exhibit A and grant such other and further relief as the Court deems just and proper.

Dated: September 12, 2017
San Juan, Puerto Rico

/s/ G. Alexander Bongartz

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